

Approved: Feb. 5, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on February 4, 1998 in Room 514-S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Barbara Tombs, Kansas Sentencing Commission
Jim Clark, Kansas County and District Attorneys Association
Tim Madden, Chief Counsel, Department of Corrections (DOC)

Others attending: See attached list

The minutes of the February 3 meeting were approved on a motion by Senator Schraad and a second by Senator Petty.

SB 429 - An act concerning the Kansas sentencing commission; relating to membership thereof

SB 435 - An act relating to authorized dispositions; sentencing upon commission of new felony while on release

SB 532 - An act relating to postrelease supervision

SB 540 - An act relating to authorized dispositions and violations of condition or release

Conferee Tombs testified in support of **SB 429, SB 435, SB 532, and SB 540** stating that the proposed bills deal with minor modifications to portions of the Kansas Sentencing Guideline Act or statutes relating to the Act. She briefly reviewed **SB 429** and stated that the passage of all of the aforementioned bills, "would provide for clarity, consistency and greater accuracy in sentencing issues related to the Sentencing Guideline Act." She included written testimony on **SB 429, SB 435, SB 532, and SB 540**. (attachment 1) Senator Harrington made a motion to pass SB 429 out favorably and place it on the consent calendar. Senator Petty seconded. Motion carried.

Conferee Clark testified in support of **SB 435** which he stated adds language to the bill with regard to sentencing guidelines. He discussed cases where sentencing conflict has arisen due to a loophole in the current language and stated that **SB 435** would correct that. (attachment 2) Following brief discussion, Senator Bond moved to pass the bill out favorably. Senator Petty seconded. Motion carried.

Conferee Madden testified in support of **SB 532** stating that the bill "provides that an offender convicted of offenses in more than one severity level shall be required to serve the longest period of postrelease supervision available for any crime upon which sentence was imposed, irrespective of the severity level of the crime." He further stated that "under current law, the period of postrelease supervision to be served is that required for the highest severity level offense." (attachment 3) Following brief discussion Senator Bond moved to pass the bill out favorably. Senator Goodwin seconded. Motion carried.

Conferee Madden testified in support of **SB 540**. He called it a "procedural bill" in that it makes technical revisions that increase consistency in statutory language regarding the duration of sentences. He detailed revised areas. (attachment 4) Senator Bond made a motion that the bill be passed and placed on the consent calendar. Senator Feleciano seconded. Motion carried.

The meeting adjourned at 10:31 a.m. The next scheduled meeting is Thursday, February 5.



5-11-98

State of Kansas
KANSAS SENTENCING COMMISSION

**Senate Judiciary Committee
Testimony
February 4, 1998**

The Kansas Sentencing Commission is testifying in support today of Senate Bill 429, Senate Bill 435, Senate Bill 532 and Senate Bill 540. The proposed bills all deal with minor modifications to the portions of the Kansas Sentencing Guideline Act or statutes relating to the Act.

SENATE BILL No. 429

AN ACT concerning the Kansas sentencing commission; relating to membership thereof; amending K.S.A. 1997 Supp. 74-9102 and repealing the existing section.

The purpose of this bill is to clean up a few technical errors that were included in the 1997 revision to this statute. First, at subsection (a) of the 1997 statute there was an inaccurate statement that the Sentencing Commission shall consist of 19 members. The membership of the Commission has always been listed at 17 members and there was no change in the number of members included in the revision to this statute enacted in 1997. This bill simply deletes the number 19 from the current statute, and replaces it with the number 17.

Prior to the 1997 amendments to K.S.A. 74-9102, the members of the Sentencing Commission from the Kansas legislature were ex officio, non-voting members. The 1997 amendments to the statute made the legislative members of the Commission voting members, and thus there were no longer any ex officio members. The changes made by this bill to subsections (b) and (f) of K.S.A. 74-9102 simply clean up the language of the statute to do away with the references to non-voting members or ex officio members.

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SENATE BILL No. 435

AN ACT concerning crimes, criminal procedure and penalties; relating to authorized dispositions; sentencing upon commission of new felony while on release; amending K.S.A. 1997 Supp. 21-4603d and repealing the existing section.

Under the current language of K.S.A. 21-4603d(a)(11) if an offender commits a new felony while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, which allows the court to sentence the offender to imprisonment for the new conviction, even when the new crime of conviction would otherwise presume a nonprison sentence. Further, this new prison sentence does not constitute a departure, thus it cannot be appealed on that issue.

However, in the case of State v. Arculeo, 261 Kan.286 (1997), the Kansas Supreme Court held that the current language of K.S.A. 21-4603d did not apply to cases where an offender was released on felony bond prior to sentencing when he committed his new crime. The court held in Arculeo that the term "conditional release" as found in the current language of K.S.A. 21-4603d did not include those offenders who were released on felony bonds, as defined by Article 28 of chapter 22 of the Kansas Statutes Annotated. This bill seeks to close that loophole by specifically including those individuals who are released from custody under Article 28 of Chapter 22 of the KSA's (whether on bond or otherwise), within the provision of K.S.A. 21-4603d that would then allow the courts to sentence those individuals to prison sentences for the new crime(s) committed while the offender is on release.

SENATE BILL No. 532

AN ACT concerning criminal procedure; relating to postrelease supervision; amending K.S.A. 1997 Supp. 22-3717 and repealing the existing section.

This bill seeks to amend the language of K.S.A. 1997 Supp. 22-3717 at subsection (d)(1)(E) of the

statute. The purpose for this amendment is to ensure that all offenders, upon release from prison, serve the longest period of postrelease supervision applicable for any crime the offender had been imprisoned on prior to said release.

Currently, upon the completion of a term of incarceration imposed under a sentence controlled by the Kansas Sentencing Guidelines Act, when an offender is released from the custody of the Kansas Department of Corrections the offender is placed on a period of postrelease supervision for either twenty-four (24) or thirty-six (36) months, depending on the highest severity level crime for which the offender has been sentenced. While in most cases the highest severity level crime for which the offender has been sentenced would also carry the longest postrelease supervision period that offender, this is not always the case. Under Kansas law individuals sentenced for sexually related crimes may be assigned a sixty (60) month period of postrelease supervision. Due to the fact that current law assigns the period of postrelease supervision for an offender based on the offenders highest severity level conviction, the situation can arise whereby an offender could be assigned a postrelease supervision period for his/her highest severity level for a crime of conviction which would have a shorter period of mandatory postrelease supervision than would apply to a sexually related crime for which the offender was also sentenced.

The present bill seeks to prevent the possibility of an offender receiving a shorter postrelease supervision period than would otherwise be allowable, by amending the language of Subsection (d)(1)(E) as follows:

1. (d)(1)(E) changed from "the highest severity level offense will dictate the period of postrelease" to "the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime."

Senate Bill 540

AN ACT concerning crimes, punishment and criminal procedure; relating to authorized dispositions and violations of conditions of release; amending K.S.A. 75-5127 and K.S.A. 1997 Supp. 21-4603d and repealing the existing sections.

This bill seeks to amend the language of K.S.A. 1997 Supp. 21-4603d and K.S.A. 75-5217 by removing the references found in those statutes concerning a number of days to be served in custody and replacing those references with numbers of months to be served in custody. The purpose behind the requested change is to bring the language of the statutes into conformity with the computerized tracking systems within the Kansas Department of Corrections which track the confinement terms by months instead of by days. [For example: KDOC uses "six months" in place of "180 days."] The KDOC has stated that the action of bringing the wording of the statutes into conformity with KDOC's computer system will prevent undue calculations and confusion for the DOC.

The specific changes to K.S.A. 1997 Supp. 21-4603d, as proposed by the bill, are as follows::

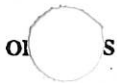
2. Subsection (a)(5), "180 days" amended to read "six months"; "180 day" amended to read "six month"
3. Subsection (e), "180 day" amended to read "six month"; "180 days" amended to read "six months"

The specific changes to K.S.A. 75-5217, as proposed by the bill, are as follows:

1. Subsection (a) has grammatical changes to the wording of the subsection; the grammatical changes made by the bill impose no substantive changes of law.
2. Subsection (b), "180 day" amended to read "six month"; "90 days" amended to read "three months"
3. Subsection (f) contains a grammatical change which does not impose a substantive change to the law.

The Sentencing Commission believes that passage of these four bills into law would provide for clarity, consistency and greater accuracy in sentencing issues related to the Sentencing Guideline Act. If you have any questions or would like any additional information, please do not hesitate to contact me.

Barbara Tombs
Executive Director



William E. Kennedy III, President
 Julie McKenna, Vice-President
 David L. Miller, Sec.-Treasurer
 Nanette L. Kemmerly-Weber, Past President



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DIRECTOR

William B. Elliott
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Kansas County & District Attorneys Association

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 EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

February 4, 1998

TO: Senate Judiciary Committee

FROM: James Clark

RE: SB 435

The Kansas County and District Attorneys Association supports SB 435, which corrects the effect of a decision by the Kansas Supreme Court in State v. Arculeo, 261 Kan. 286, 933 P.2d 122, decided January 24, 1997, which held that conditional release as defined in K.S.A. 21-4603d does not include a release on bond, hence imposition of a prison sentence for a presumptive nonprison offense becomes a departure. In reaching its conclusion, the Court distinguishes the language in K.S.A. 21-4603d, passed as part of sentencing guidelines, from language in the pre-guidelines statute, K.S.A. 21-4608(d) (similar to the language at page 3, lines 25 - 27 of SB 435), which the Court had interpreted as requiring mandatory consecutive sentences where a new crime was committed while defendant was released on bond, State v. Reed, 237 Kan. 685, 703 P.2d 756 (1985). After noting that 21-4603d does not contain the specific language of 21-4608(d), the Court states "Had the legislature wanted an accused charged with a new crime while released on bond for a prior felony to be covered under the provisions of K.S.A. 21-4603d...it could have added the language contained in K.S.A. 21-4608(d)...." SB 435 is a legislative response to the Court's invitation.

Assuming the difference in language is substantive policy and not technical or drafting error, the policy issues seem to be: 1) Did the Legislature intend to eliminate mandatory consecutive sentence and imposition of incarceration for presumptive probation crimes committed while on bond when it passed sentencing guidelines? In a recent decision, State v. Marsh, No. 79122, decided January 23, 1998, reversing imposition of prison sentences resulting from defendant's escape from jail while being held on burglary and felony theft charges, the Court seems to find legislative intent that the defendant must be serving a felony sentence in some capacity before the prison sentence can be imposed. This broader conclusion is negated by the specific language in 21-4608. 2) The second policy issue is whether the bill affects the presumption of innocence and the right to bail pending conviction of a crime. SB 435 does not in any way limit the right to bail, but enhances public safety by advising those admitted to bail of severe consequences should they commit a new offense. As for the presumption of innocence, it will have been successfully rebutted by the very convictions the sentences of which are the subject of this bill.

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sumptive sentence examined. *State v. Wilkie*, 19 K.A.2d 969, 970, 879 P.2d 39 (1994).

17. Whether defendant sentenced after KSGA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 659, 895 P.2d 186 (1995).

21-4607. Criteria for imposing fines. (1) When the law authorizes any other disposition, a fine shall not be imposed as the sole and exclusive punishment unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, the court is of the opinion that the fine alone suffices for the protection of the public.

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment, probation or assignment to a community correctional services program unless:

(a) The defendant has derived a pecuniary gain from the crime; or

(b) the court is of the opinion that a fine is adapted to deterrence of the crime involved or to the correction of the offender.

(3) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

History: L. 1969, ch. 180, § 21-4607; L. 1986, ch. 123, § 8; July 1.

Cross References to Related Sections:

Authorized fines, see 21-4503, 21-4503a.

Law Review and Bar Journal References:

"Creative Punishment: A Study of Effective Sentencing Alternatives," David F. Fisher, 14 W.L.J. 57, 71 (1975).

"Decisions, Decisions, Decisions," Terry L. Bullock, 17 W.L.J. 26, 27 (1977).

"A Comment on Kansas' New Drunk Driving Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230, 232 (1982).

CASE ANNOTATIONS

1. Cited in holding legislative intent is imposition of mandatory minimum sentence when firearm used, 21-4618. *State v. Keeley*, 236 K. 555, 559, 694 P.2d 422 (1985).

2. When considering fines, court must also consider provisions herein. *State v. Scherer*, 11 K.A.2d 362, 370, 721 P.2d 743 (1986).

3. Cited; specific findings required of court before imposing fine examined. *State v. McClothlin*, 242 K. 437, 747 P.2d 1335 (1988).

4. When court must consider defendant's financial ability to reimburse state for defense services under 21-4610(4)(c) determined. *State v. Crawford*, 248 K. 42, 47, 804 P.2d 1385 (1991).

5. Court must make specific findings pursuant to paragraphs (2) and (3) before imposing a fine. *State v. McNett*, 15 K.A.2d 291, 293, 807 P.2d 171 (1991).

6. Where judge imposes fine beyond minimum mandatory amount stated in 8-1567, judge must comply with 21-4607. *State v. Shuster*, 17 K.A.2d 8, 10, 829 P.2d 925 (1992).

7. Whether municipal judge has authority to order defendant to reimburse city for appointed counsel examined. *City of Dodge City v. Anderson*, 20 K.A.2d 272, 273, 886 P.2d 901 (1994).

21-4608. Multiple sentences; defendant subject to or under sentence in federal court or court of another state. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while

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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: February 4, 1998
To: Senate Judiciary Committee
From: Charles E. Simmons, Secretary
Subject: SB 532

SB 532 provides that an offender convicted of offenses in more than one severity level shall be required to serve the longest period of postrelease supervision available for any crime upon which sentence was imposed, irrespective of the severity level of the crime. Under current law, the period of postrelease supervision to be served is that required for the highest severity level offense.

SB 532 addresses a situation which can occur under current law with certain sex offenders. Most offenders sentenced under the Sentencing Guidelines Act receive a postrelease supervision period of either 24 or 36 months (reducible in each instance by up to 12 months based on the behavior of the offender) plus the amount of good time awards received while incarcerated. The sentencing court, however, may impose a postrelease supervision period of up to 5 years for persons convicted of a sexually motivated crime or a sexually violent crime. If these persons are also convicted of a crime with a higher severity level than the sex offense, current law provides that the postrelease supervision period of the higher severity level offense will apply—even if it is of shorter duration than that imposed for the sex offense. SB 532 provides that the period of postrelease supervision in this situation would be the one with the longest duration.

We do not anticipate that a large number of offenders would be affected by this bill. SB 532 is consistent, however, with our understanding of the Legislature's intent to allow courts to impose longer periods of postrelease supervision for sex offenders. The sentencing court's option for ordering a longer period of supervision for these offenders should not be negated simply because the offender has also committed another crime in a higher severity level. Therefore, the department recommends favorable action on SB 532.

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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: February 4, 1998
To: Senate Judiciary Committee
From: Charles E. Simmons, Secretary *CES*
Subject: SB 540

The Department of Corrections supports SB 540. The bill does not make substantive revisions to existing law, but it does make technical revisions that increase consistency in statutory language regarding the duration of sentences. Most sentence-related dispositions in Kansas statutes are expressed in months rather than days. This bill conforms the language in two sets of exceptions to the general practice by converting these provisions from days to months. Specifically, the bill:

- Provides that sentence dispositions involving assignment to a conservation camp shall be up to six months instead of 180 days; and also converts the period of aftercare supervision by community corrections agencies from 180 days to six months.
- Provides that the maximum period of incarceration following revocation of postrelease supervision shall be six months instead of 180 days; and also converts the possible reduction of the incarceration period from 90 days to three months.

Passage of the bill will have a positive impact on the Department of Corrections because it will facilitate sentence calculations regarding condition violators and conservation camp placements by KDOC. The use of days, as provided under current law, complicates sentence computation for these offenders. Months are simpler to use because they are fewer in number and it is not necessary to take into account the variation in the number of days among months. Because monthly increments are simpler, sentence computation can be performed more quickly, can be more easily explained to offenders, can be more readily reviewed and checked, and is less prone to error. For these reasons, SB 540 will improve efficiency in departmental operations and we support passage of the bill.

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